

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.622 of 2019

Date of decision: 3rd September, 2019

Vinay

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Neeraj Saini, Advocate for
Mr. S.R. Hooda, Advocate for the petitioner.
Mr. Ripudaman, Asstt. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J. (ORAL)

A case by way of FIR No.455 dated 21.08.2017 was registered against the petitioner Vinay under Sections 376/452/506 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 with Police Station Ganaur, District Sonapat. It is during the course of trial, the accused moved an application for conducting ossification test of the prosecutrix, which stood declined vide impugned order dated 04.01.2019 by the Court of learned Additional Sessions Judge, Sonapat. The present revision petition is a challenge to the same.

Upon hearing Mr. Neeraj Saini, Advocate on behalf of Mr.S.R. Hooda, Advocate for the petitioner; Mr. Ripudaman, Asstt. Advocate General, Haryana for the respondent/State and on perusal of the records.

The claim of the revisionist petitioner is that the prosecution has relied on the school leaving certificate to establish that the prosecutrix at the time of occurrence was a minor, when as per the Aadhaar Card she is a major, and thus, prayed for holding of ossification test to determine her age.

It is there in the complaint Ex.PW1/A moved by the complainant whereby the age of the prosecutrix has been depicted to be 16 years and even it is so at the time of recording of her statement under Section 164 Cr.P.C. by the learned Judicial Magistrate. It is also the stand of the prosecutrix that she was a student of 9th class and which fact of her age also stands reflected in the medico legal examination report. The prosecutrix has stepped into the witness box as PW6 and has reiterated her stand to be of 16 years of age. The prosecution witnesses comprising of the prosecutrix PW6 and PW14, have been cross-examined at length as to the date of birth of the prosecutrix. It is fairly conceded at the bar by learned counsel for the petitioner that they had not led any evidence to substantiate their claim that the prosecutrix at the time of occurrence was a major and merely because an incorrect copy of the Aadhaar Card which is sought to be relied upon when the same has been subsequently rectified, does not help the case of the petitioner. The prosecution has completed its evidence and the defence is at liberty to lead appropriate evidence to forward their claim to this effect. More so, during the course of investigations or initial stage of trial, no such plea was ever raised by

the defence nor any application was moved for holding of ossification test of the prosecutrix. The attempt to move such an application at the fag end of the trial, certainly as has been held by the Court below, is a clever device to unduly delay and prolong the trial. More so, the alleged occurrence is claimed to have taken place around 21.08.2017 and at the time of the occurrence, she was 16 years of age. Now, at this belated stage, after lapse of two years she certainly has become a major and no useful purpose shall be served by holding such an examination, besides the fact that it is not a sure test and there are chances of variation on both sides. Thus, at this juncture, acceding to such a prayer of the petitioner would not lead to any tangible results. The counsel could not convince this Court how there has been any illegality or perversity in the impugned findings. The petition being devoid of any merit, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

September 3, 2019

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No